

JUDGE ROELT

08 CV 3511

197-08/PJG  
FREEHILL HOGAN & MAHAR, LLP  
Attorneys for Plaintiff  
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New York, NY 10005  
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Peter J. Gutowski (PG 2200)  
Barbara G. Carnevale (BC 1651)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

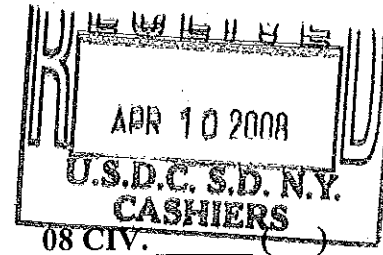
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ARACRUZ TRADING LTD.,

Plaintiff,

-against-

JAPAU OIL AND MARITIME SERVICES PLC,

Defendant.  
-----X



**VERIFIED COMPLAINT**

Plaintiff ARACRUZ TRADING LTD ("ARACRUZ"), by its attorneys Freehill Hogan & Mahar LLP, as and for its Verified Complaint against Defendant JAPAU OIL AND MARITIME SERVICES PLC ("JAPAU"), alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure in that it involves a claim for damages arising from a collision between the M/T GAS AMAZON and the derelict ship STELLAR which was being towed by the tug JAPAU B. The case thus falls within this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333, *et seq.*

2. At all times material hereto, Plaintiff ARACRUZ was and still is a business entity organized and existing under the laws of the Marshall Islands, with an

office and place of business in c/o its agent Stealth Maritime Corporation S.A. at 331 Kifissias Avenue 14561 Kifissia, Greece.

3. At all times material hereto, Plaintiff ARACRUZ was and still is the Owner of the ocean going M/T GAS AMAZON.

4. At all times material hereto, Defendant JAPAU B was and still is a business entity organized and existing under the laws of a foreign country, with an office and place of business at Plot 39 Eastern-By-Pass, Maritime Base, Port Harcourt, Rivers State, Nigeria, and was and still is the owner of the tug boat JAPAU B.

5. On or about February 19, 2008, the Defendant's tug boat JAPAU B undertook to tow a wrecked and derelict vessel the M/T STELLAR through the outer anchorage at Port Harcourt.

6. While under the control and tow of the JAPAU B, the M/T STELLAR struck and hit the M/T GAS AMAZON while the latter was at anchor.

7. The cause of the collision was the negligence of the Defendant, its servants or agents in their failure to properly navigate the flotilla consisting of the JAPAU B and the M/T STELLAR and/or otherwise in their failure to observe and adhere to all provisions of applicable legislation and international regulations regarding the movements of vessels and the avoidance of collision.

8. As a consequence of the foregoing, the Plaintiff has suffered damages which, as nearly as can be computed, include the following items of claim:

Temporary repairs in Lagos	USD 2,500.00
General expenses in Lagos	USD 3,500.00
Permanent repairs in Algeciras	USD 120,000.00
Disbursements account	USD 30,000.00

General expenses in Algeciras	USD 25,000.00
Inerting and gassing-up expenses	USD 75,000.00
Total off-hire	USD370,000.00
<u>Bunkers/LO consumption</u>	<u>USD130,000.00</u>
Total	USD756,000.00

9. Plaintiff expressly reserves the right to amend this Complaint to adjust the quantum of its claims as additional information becomes available and/or to amend this Complaint to incorporate any further or additional types of damage as yet not readily apparent.

10. After investigation, the Defendant JAPPAUL cannot be "found" with the District for the purpose of Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, but Plaintiff is informed that Defendant has, or will shortly have, assets within this District comprising, *inter alia*, cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant in its name or as may be held, received or transferred for its benefit at, moving through, or being transferred and/or wired to or from banking institutions or such other garnishees who may be served with a copy of the Process of Attachment issued herein.

11. This action is brought to obtain jurisdiction over the Defendant, and to obtain security in respect to the Plaintiff's damages, together with an allowance for interest and anticipated costs which, as nearly can be estimated, totals \$158,760, and for judgment on the claim and subsequent enforcement thereon against any security obtained in this action.

12. Based upon the foregoing, the total amount Plaintiff seek to attach in this action, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, is **\$914,760**.

W H E R E F O R E, Plaintiff pray:

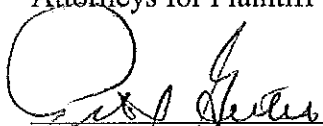
- a. That process in due form of law according to the practice of this Court may issue against Defendant JAPAU, citing it to appear and answer the foregoing failing which a default will be taken;
- b. That if the Defendant cannot be found within this District pursuant to Supplemental Rule B, all tangible or intangible property of the Defendant as described herein, up to and including the amount of the claims of **\$914,760** be restrained and attached, including, but not limited to any cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, charter hire, sub-charter hire, and/or other assets of, belonging to, due, held or being transferred to or for the benefit of the Defendant at, moving through, or being transferred and/or wired to or from banking institutions or such other garnishees who may be served with a copy of the Process of Attachment issued herein;
- c. That this Court enter judgment on the Plaintiff's claims as aforesaid and/or retain jurisdiction of this matter for purposes of entry of judgment on any judgment entered elsewhere and thereafter enter judgment herein and allow execution against any assets restrained by virtue of this action and,

d. That Plaintiff has such other, further and different relief as this Court may  
deem just and proper.

Dated: New York, New York  
April 10, 2008

FREEHILL HOGAN & MAHAR LLP  
Attorneys for Plaintiff

By:

A handwritten signature in black ink, appearing to read "Peter J. Gutowski", is written over a horizontal line.

Peter J. Gutowski (PG 2200)  
80 Pine Street  
New York, NY 10005

ATTORNEY VERIFICATION

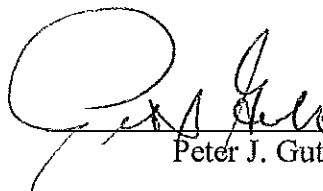
State of New York     )  
                                  ) ss.:  
County of New York    )

Peter J. Gutowski, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Freehill Hogan & Mahar, LLP, attorneys for the Plaintiffs in this action. I have read the foregoing Amended Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

2. The sources of my information and the grounds for my belief are communications from our client and its Hong Kong solicitors and documents provided by our client and its Hong Kong solicitors regarding this claim.

3. The reason this verification is made by an attorney and not by the Plaintiffs is because the Plaintiffs are foreign entities, none of whose officers are presently within the State of New York.

  
Peter J. Gutowski

Sworn to before me this  
10<sup>th</sup> day of April, 2008

  
NOTARY PUBLIC

HAZEL S. ROSENTHAL  
Notary Public, State of New York  
No. 01RO4641178  
Qualified in Queens County  
Certified in New York County  
Commission Expires Dec. 31, 2010